



## STAFF REPORT

### Planning and Development

**Subject:** *Application by Felix and Kimberly D'Eon for a Development Application to enable a sawmill operation*

**To:** Municipality of Argyle CAO and Planning Advisory Committee for February 8, 2022

**Date Prepared:** January 18, 2022

**Related Motions:** None

**Prepared by:** Reid Shepherd, LPP, MCIP, Project Planner, WSP Canada Inc.

**Reviewed by:** Jess Harper, LPP, MCIP, PMP, Senior Planner, WSP Canada Inc.

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### Summary

The Municipality has received an application from Felix and Kimberly D'Eon for a development agreement to enable a sawmill operation at 333 Highway 335, Pubnico (PID 90062399). The application includes the request to process firewood as a part of the sawmill operation, though for the purposes of this application, the firewood processing would be considered part of the sawmill operation.

The subject site is zoned Coastal Community (CC) in the Land Use By-law (LUB). The LUB does not permit sawmills as an as-of-right use within the CC zone, but they are a permitted use through a development agreement (DA) application. WSP are proposing that a development agreement be considered on the subject site (PID 9062399) to permit the proposed use.

### Financial Impact Statement

There is no immediate financial impact aside from the typical public engagement process and staffing requirements resulting from the application.

### Recommendation

That the Planning Advisory Committee recommend to Council to give first reading to the Development Agreement Application of the subject site at 333 Highway 335 (PID 9062399) to allow for a sawmill use in the Coastal Community (CC) zone for the purpose of enabling a public hearing.

### Recommended Motion

Municipality of Argyle Public Works Department / Community Development recommends that the Planning Advisory Committee recommend that Council:

- give initial consideration for the proposed development agreement as generally contained in Attachment A of this report to allow for a sawmill use on the subject site at 333 Highway 335 (PID 90062399);
- proceed to a public hearing without a second meeting of planning advisory committee unless substantial comments are received from the public; and
- authorize staff to schedule a public hearing for the application.



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#### Background

Felix and Kimberly D'Eon has applied for a development agreement on the subject property at 333 Highway 335 (PID 90062399) to enable a sawmill operation. An excerpt of the zoning map (Figure 1) shows the location of the subject property.

This application was initiated as a result of compliance action taken by the Municipality, as the proposed use has already been established. In response, the applicants have submitted an application to legally permit the sawmill business.

#### Subject Property

The subject property is located at Civic Number 333, Highway 335 (PID 90062399) in the West Pubnico area. The total size of the subject property is approximately 8.3 acres, with approximately 230 feet of frontage along Highway 335.

The subject property is designated Coastal Communities (CC) in the Generalized Future Land Use Map (GFLUM) and respectively zoned as Coastal Communities (CC) in the Land Use By-law (LUB), Zoning Map Schedule E. Adjacent properties along Highway 335 are also zoned as Coastal Community (CC).

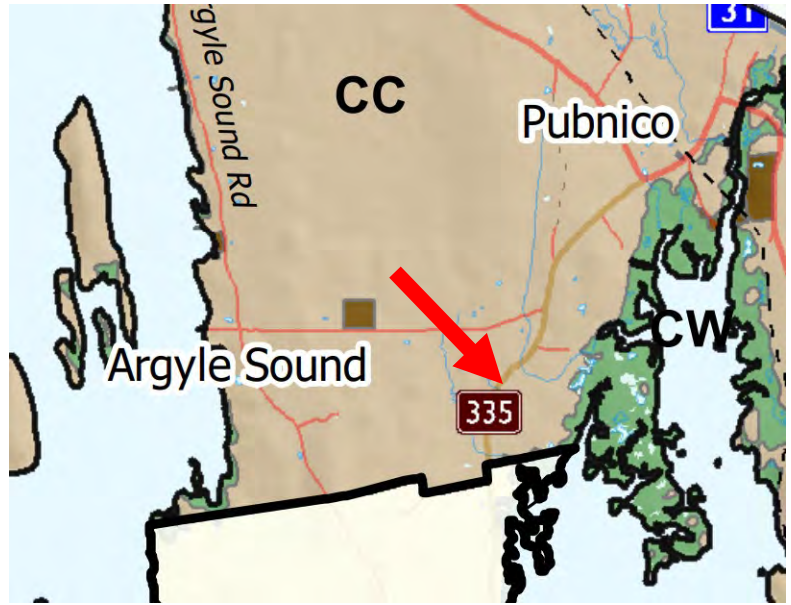


Figure 1: Subject property area zoning and location.

The subject property has already been developed with two buildings. The first building is approximately 480 square feet and contains the sawmill, while the second, smaller shed building is approximately 168 square feet.

#### Development Proposal

The major aspects of the applicant's proposal for the subject property at 333 Highway 335 (PID 90062399) include:

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**Figure 2: Existing buildings on site.**

- A sawmill operation and associated firewood processing uses; and
- Legalize the use of the existing buildings which are approximately 480 square feet and 168 square feet in area

The Coastal Community (CC) zone does not permit sawmills within the zone as-of-right, though they are permitted through the development agreement process. The applicants must go through the development agreement process in order to permit the proposed use.

### Policy Analysis

WSP and Staff are currently reviewing the application based on the applicable policies contained in the Municipal Planning Strategy (MPS).

WSP are proposing a development agreement process to permit a sawmill operation use



**Figure 3: Structure containing sawmill operation.**

on PID 90062399 at 333 Highway 335. Existing policies in the MPS allow Council to consider a development agreement without needing amendments to *Municipal Planning Strategy* policy as it is located in the Coastal Communities (CC) designation. The development agreement on the subject site is enabled by Policy 3.3.7 of the MPS. As indicated in the *Municipal Government Act*, there is a right of appeal option for approval or refusal of the development agreement.

Appendix A contains the proposed development agreement for PID 90062399 at 333 Highway 335 that is zoned Coastal Community (CC). Attachment B contains a preliminary table of the evaluative criteria from the enabling policies and corresponding comments from WSP.

### Discussion

The surrounding properties along Highway 335 are currently zoned Coastal Community (CC). The Coastal Communities (CC) designation recognizes that the areas along the coastline of Argyle are primarily residential, but are also interspersed with institutional, recreational, agricultural and forestry uses, primarily in built up areas. The Municipal Planning Strategy (MPS) also recognizes that there are existing industrial uses throughout the community, and that Council may consider additional industrial uses provided that the implementation policies are met and Council believe it is in the best interest of the community.



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**Figure 4: Entrance to site.**

The intent of the Coastal Community (CC) Zone is to accommodate an ample supply of diverse residential, commercial, institutional, recreational, agriculture, forestry, and light industrial uses. The lots immediately to the west (across the highway) are currently occupied by residential uses, while lots to the north and south are occupied by light industrial uses.

WSP feel the proposal is consistent with the intent of the Municipal Planning Strategy (MPS) based on the review of policies contained in the MPS, as indicated in more detail in Appendix B. The development agreement application seeks to maintain the Coastal Community (CC) zoning on the entire site, as per the intent of these lands. The general intent of the MPS policy is to ensure that an ample supply of Coastal Community land is maintained, as well to ensure that new industrial operations are sited to minimize land use conflicts.

There is not expected to be an increase in traffic to the site, other than that which has already occurred as a result of the use being established. Nova Scotia Department of Public Works have granted approval for a change of use for the subject property. Any further comments received will form part of the final review of the application.

The applicants have noted that there is a registered easement/right-of-way on the property. A search of Property Online did not reveal a survey diagram, so the location of the easement on the property is not currently known.



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### Public Participation

Staff will comply with Public Participation Policies of the Municipal Planning Strategy when processing this application. As per Section 206 of the *Municipal Government Act*, a public hearing is required for entering into a Development Agreement to hear input from the community.

Figure 2 illustrates the general process followed by the Municipality for a Development Agreement application. A newspaper advertisement will be placed in the local newspaper, *VanGuard*, notifying the public of the application as well as for the public hearing two weeks in advance of the public hearing. A notice of the application will also be placed on the municipal website and a sign posted on the property.

Staff will mail out a notice of application to all property owners within 152 meters of the subject property and a public hearing will be held prior to the decision of Council.

The public is encouraged to request additional information and clarification from Staff leading up to the public hearing if they have any questions.

Note that there is a right of appeal option for approval of refusal by Council for the adoption of a development agreement.

### Conclusion

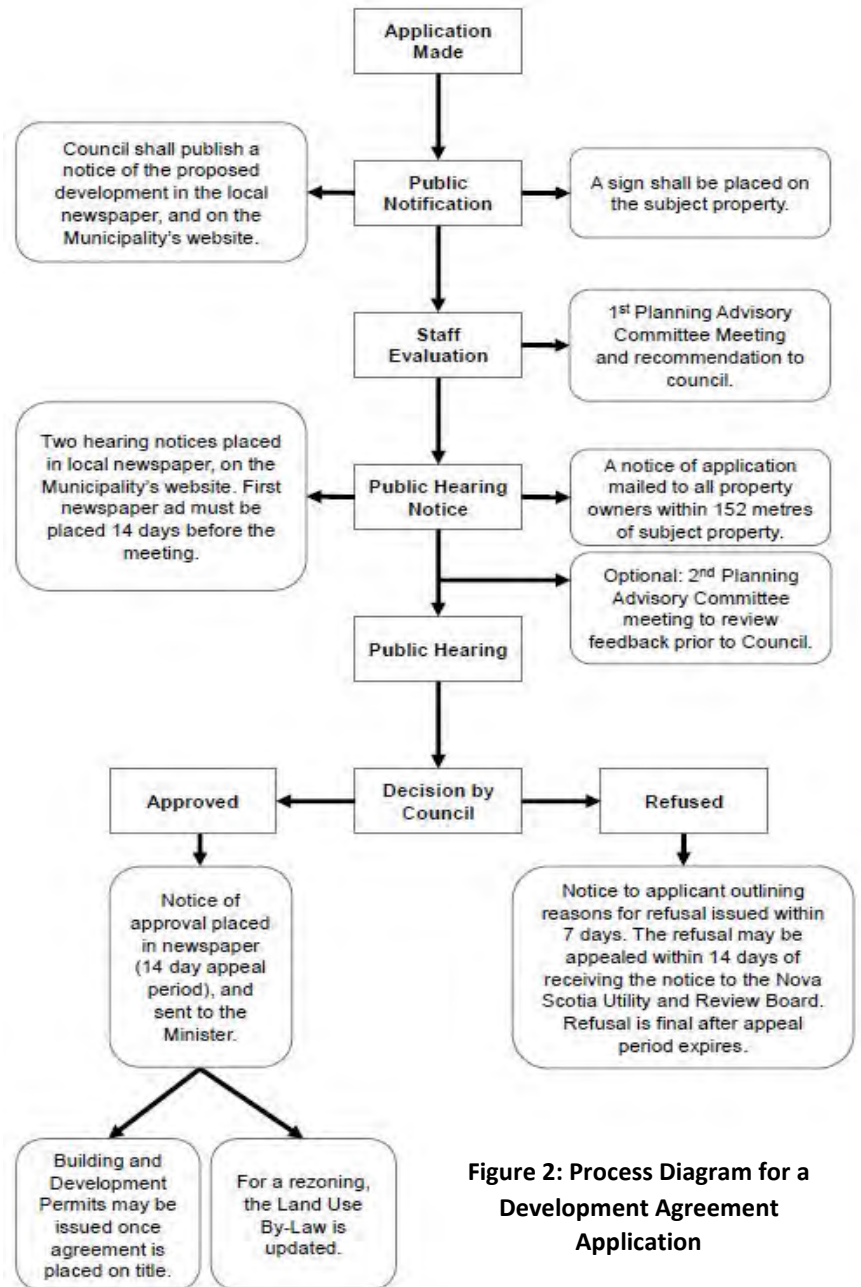
Staff will continue to review the application by Felix and Kimberly D'Eon to apply a Development Agreement (DA) to enable a sawmill operation at 333 Highway 335, Pubnico (PID 90062399). The applicant's proposal will be evaluated using all applicable policies in the Municipal Planning Strategy. Staff will make a recommendation to Council in its final staff report.

### Recommendation

That the Planning Advisory Committee recommend to Council to give first reading to the Development Agreement Application of the subject site at 333 Highway 335 (PID 9062399) to allow for a sawmill use in the Coastal Community (CC) zone for the purpose of enabling a public hearing.

### Alternatives

The Planning Advisory Committee may recommend that Council refuse the proposed development agreement application, and in doing so, must provide reasons why the proposed application does not reasonably carry out the



**Figure 2: Process Diagram for a Development Agreement Application**



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intent of the MPS. A decision of Council to refuse the proposed application is appealable to the N.S. Utility & Review Board.



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#### **Appendix A: Draft Proposed Development Agreement (DA)**

## DEVELOPMENT AGREEMENT

TO PERMIT A SAWMILL OPERATION at PID No. 90062399

THIS AGREEMENT MADE THIS \_\_\_\_\_ DAY OF FEBRUARY 2022

BETWEEN:

**FELIX AND KIMBERLY D'EON**, of West Pubnico, Province of Nova Scotia  
(hereinafter called the "Developers")

OF THE FIRST PART

- and -

**THE MUNICIPALITY OF THE DISTRICT OF ARGYLE**, a body corporate  
(hereinafter called the "Municipality")

OF THE SECOND PART

**WHEREAS** the Developers have good title to lands situated at 333 Highway 335, Nova Scotia and identified as PID number 90062399, and which said lands (hereinafter called the "Property") is more particularly described in Schedule "A" of this Agreement;

**AND WHEREAS** pursuant to Policy 3.3.7 of the Municipality of the District of Argyle's Municipal Planning Strategy the Developers have requested that a development agreement be entered into to permit the Property to be used for a sawmill operation, hereinafter called the "Development";

**AND WHEREAS** the Municipality, by a resolution of Council passed on the 12<sup>th</sup> day of February 2022 approved entering into a Development Agreement to permit the Development.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the granting by the Municipality of the Development Agreement requested by the Developers, the Developers and the Municipality agree as follows:



**PART 1: DEFINITIONS**

For the Purpose of this Agreement, all other words shall carry their customary meaning except those defined under in the definitions section of the Municipality of the District of Argyle's Land Use Bylaw, as amended from time to time.

**PART 2: GENERAL REQUIREMENTS**

- 2.1 Subject to the provisions of this Agreement, the Developers shall be bound by all bylaws and regulations of the Municipality as well as by any applicable provincial and federal statutes and regulations.
- 2.2 Notwithstanding Section 2.1, where the provisions of this Agreement conflict with those of any provincial or federal regulations, bylaws or codes, the more stringent requirements shall apply.
- 2.3 The Developers shall assume full responsibility for meeting all obligations and financial liabilities required to meet all federal, provincial, or municipal regulations, bylaws or codes in force at the present time, or any time in the future.
- 2.4 The Developers shall ensure that any structure permitted by this Agreement meets the requirements of the National Fire Code and the National Building Code at the time of construction.
- 2.5 The Schedules to this Agreement form part of this Agreement and are binding upon the Developers. Where a provision of a Schedule conflicts with the body of this Agreement, the body of this Agreement shall prevail.

**PART 3: DEVELOPMENT OF THE PROPERTY**

**3.1 Land Use**

- 3.1.1 Only the following uses shall be permitted on the Property:
  - a) All uses permitted in the underlying zoning, as per the requirements of the Municipality of the District of Argyle Land Use Bylaw, as amended from time to time, in addition to any other uses permitted by this agreement; and
  - b) The developer shall be permitted to construct a sawmill operation on the subject property, provided the following requirements are met:
    - i. Buildings or outdoor areas used for the sawing or processing of wood, or similar accessory uses which could cause offensive noises or dust, shall be setback a minimum of 30 metres from abutting lot lines used for residential purposes, where said lots are not owned by the Developer;
    - ii. Sufficient screening shall be maintained from buildings related to the sawmill and wood processing facility, either with a fence or with vegetated areas having a minimum width of 8 metres; and
  - c) other uses, signage, parking or loading areas accessory to the principal use as per the requirements of the Municipality of the District of Argyle Land Use Bylaw, as amended from time to time.
- 3.1.2 Except where specifically stated otherwise in this agreement, all provisions of the Land Use Bylaw of the Municipality of the District of Argyle, approved by Municipal Council, as amended from time to time, shall apply to this development.
- 3.1.3 The Developers shall ensure that:
  - a) all structures are maintained in good repair and in a tidy, attractive and usable state;

- b) all lawns, trees, shrubs, parking areas, lighting systems, and other landscaping elements are maintained in a tidy, attractive and usable state free of unkempt matter of any kind;
- c) the Development shall not generate emissions such as noise, dust, radiation, odors, liquids, or light to the air, water, or ground so as to create a recognized health or safety hazard, or create an unreasonable nuisance to adjacent properties.

### **3.2 Development Permit**

- 3.2.1 This development agreement shall be administered by the Development Officer as appointed by the Council of the Municipality of Argyle.
- 3.2.2 The Development Officer, at their discretion, may revoke a development permit pursuant to this agreement if:
  - a) the development is not in accordance with:
    - i. the Land Use Bylaw where not varied by this agreement,
    - ii. this agreement, or
    - iii. the plans associated with the approved development permit.
  - b) the permit was issued based on incorrect information provided by the applicant when applying for a development permit; or
  - c) the permit was issued in error; or
  - d) continued complaints and matters of non-compliance arise related to the operation of the use.
- 3.2.3 The development described in this agreement shall not be approved until the Development Officer has issued a development permit. In addition, the Development Officer shall not issue a development permit until:
  - a) Nova Scotia Department of Public Works has granted positive recommendation on all transportation issues within their responsibility and has given their approval, if any is required.
  - b) Payment for all required permit fees, registration of the document at the Registry of Deeds, and costs associated with advertising and processing the application have been received by the Municipality.

### **3.3 Building and Site Requirements**

- 3.3.1 **Municipal Services**  
All on site servicing and/or connections to the Municipality's Sanitary Sewer Services by the Developers will be maintained in a manner that is satisfactory to the Municipality.
- 3.3.2 **Parking and Loading Areas**
  - a) The parking and loading areas shall be surfaced with asphalt, gravel, or similar hard surface materials.
  - b) The Developers shall be responsible for supplying, installing, and maintaining at the Developers' cost, directional and regulatory signage on the Property as required by the Provincial Traffic Authority.
- 3.3.3 **Traffic and Vehicle Access**  
Final design and location of all driveways, pedestrian walkways, and regulatory signage are subject to approval by the Provincial Traffic Authority.

- 3.3.4 All outdoor lighting shall be installed so as to reflect light away from adjacent properties. In order to preserve the night sky, the Developer is encouraged to use sensitive lighting which is orientated downward, is low wattage, energy efficient and minimizes glare.
- 3.3.5 Operation and Maintenance of Property
- a) Any refuse, composting, or recycling container must be screened from public view and not situated within 6 m of any property abutting the development.
  - b) The Developers shall keep the Property free from litter and debris and shall provide litter (and recycling if provided) receptacles in appropriate and easily accessible locations and service, maintain, and empty the receptacles as required.

#### **PART 4: VARIANCE**

- 4.1 The Development Officer may grant a variance in the terms of this Agreement in accordance with Section 235 of the Municipal Government Act.

#### **PART 5: AMENDMENTS**

- 5.1 Any amendment to this agreement, whether substantive or otherwise, must be approved by both parties in writing.
- 5.2 The following shall be considered non-substantial matters:
- a) The addition, removal or relocation of accessory buildings or structures.
  - b) An extension to the time limits identified in Part 7 of this agreement by a period to be decided by Council.
  - c) Matters dealing with signage.
  - d) Matters dealing with parking.
  - e) Matters dealing with landscaping.
  - f) Changes to the permitted use of the property that are necessary to accommodate features that are subject to approval or authorization by other authorities such as, but not limited to, the Nova Scotia Department of Public Works and Nova Scotia Environment.
- 5.3 Any non-substantial amendment to either the terms of this agreement or to any Schedules shall be subject to the amendment procedures set out in the Municipal Government Act.
- 5.4 Substantial matters shall relate to any matter not identified as insubstantial in this Part or otherwise addressed in this Agreement. This Agreement may be amended in order to provide for substantial matters according to the Municipal Government Act.

#### **PART 6: IMPLEMENTATION**

- 6.1 Upon breach by the Developers of any of the terms or conditions of this Agreement, the Municipality may, after thirty days notice in writing to the Developers of the breach, enter the Property and perform any of the terms and conditions of this Agreement. It is agreed that all reasonable expenses arising out of the entry or the performance of the terms and conditions may be recovered from the Developers by direct suit and shall form a charge on the Property.
- 6.2 This Agreement shall be binding upon the Developers' assigns, mortgagees, lessees, successors and occupiers of the Property.
- 6.3 This agreement shall be filed by the Municipality in the Registry of Deeds at Bridgewater, Nova Scotia, and shall form a charge or encumbrance upon the property as described in

Schedule "A" attached hereto.

- 6.4 The Developers hereby certify that they are the sole owner of the Properties.
- 6.5 The Developers further certify that they have not disposed of any interest in the Property and there are no judgements, mortgages or other liens or encumbrances affecting the Property in addition to those described in this Agreement.
- 6.6 The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not prejudice the validity or enforcement of any other provisions.
- 6.7 The Developer shall at all times indemnify and save harmless the Municipality from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomever made, brought or prosecuted to the extent that the foregoing are based upon, occasioned by or attributable to anything done or omitted by the Developer or his servants or his agents or his employees in the fulfillment of any of his obligations under this Agreement.
- 6.8 Upon completion of the Development, or after five (5) years from the date of approval of this Agreement, whichever time period is less, Council may review this agreement, in whole or in part, and may:
  - a) retain the Agreement in its present form; or
  - b) discharge the Agreement on the condition that for those portions of the development that are deemed complete by the Council, the Developer's rights hereunder are preserved, and Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use Bylaw.

## **PART 7: TIMING**

- 7.1 The Developers shall enter into this Agreement within one year of the Municipality of the District of Argyle's approval of this Agreement.
- 7.2 Pursuant to the terms and conditions of this agreement, the Developer shall apply for a development permit for the Development within five (5) years of the parties entering into this development agreement. Once a development permit has been issued, the development shall be made consistent with all terms and conditions of this agreement no later than two (2) years after the development permit has been issued, otherwise the development agreement may be terminated and the existing zone and all provisions of the Land Use Bylaw shall apply without the concurrence of the property owner.
- 7.3 If the Developers fails to conform to any of these specified time limits, or breaches any other term of this Agreement, this Agreement may be discharged by Council, with or without the concurrence of the property owner, and the lands will become subject to the Municipal Planning Strategy and Land Use Bylaw.

## **SCHEDULES**

- A Legal description of property

**IN WITNESS WHEREOF** the parties hereto have executed these presents on the day and year first above written.

SIGNED, SEALED & DELIVERED  
in the presence of:

	)	<u>DEVELOPER</u>
	)	
	)	
_____	)	_____
Witness	)	Felix and Kimberly D'Eon
	)	
	)	
	)	<u>THE MUNICIPALITY OF THE DISTRICT OF</u>
	)	<u>ARGYLE</u>
	)	
_____	)	_____
Witness	)	Municipal Clerk
	)	

PROVINCE OF NOVA SCOTIA  
COUNTY OF YARMOUTH

On this \_\_\_\_\_ day of **November 2021**, before me, the subscriber, personally came and appeared \_\_\_\_\_, a subscribing witness to the foregoing agreement, who having been by me duly sworn, made oath and said that the developer, one of the parties thereto, caused the same to be executed in their name in his/her presence.

\_\_\_\_\_  
A Barrister of the Supreme Court of Nova Scotia

PROVINCE OF NOVA SCOTIA  
COUNTY OF YARMOUTH

On this \_\_\_\_\_ day of **November 2021**, before me, the subscriber, personally came and appeared \_\_\_\_\_, a subscribing witness to the foregoing agreement who having been by me duly sworn, made oath and said that the Municipality of the District of Argyle, a Municipal Body Corporate, duly affixed its Corporate Seal and executed by Mr. Alain Muise, its Chief Administrative Officer, its proper officers duly authorized in that behalf in his/her presence.

\_\_\_\_\_  
A Barrister of the Supreme Court of Nova Scotia



## **SCHEDULE "A"**

### ***PID 90062399***

This agreement applies to property identified by PID 90062399 and further described by Deed filed at the Registry of Deeds Office for the registration district of Yarmouth in Bridgewater, Nova Scotia, registered under the *Land Registration Act*.



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#### Appendix B: Policy Evaluation

The proposal may be considered by Council through the following applicable policies of the Municipal Planning Strategy (MPS) for Argyle:

<b>COASTAL COMMUNITIES</b>	
<p>The mainland portion of the Coastal Community Designation, including those inshore islands with connections to the mainland, are primarily residential. Institutional, recreational, agricultural and forestry uses are dispersed among the communities and are a traditional element in built-up areas. The communities do have concerns regarding intensive livestock operations such as mink ranches, and Heavy Industrial uses, which have potential to disrupt the quality-of-life of nearby residences.</p> <p>Council will designate all lands and islands within the Coastal Communities designation, excluding the Marine Industrial and Coastal Wetlands designations, as Coastal Communities (CC) on the Generalized Future Land Use Maps (GFLUM). Within this designation Council will accommodate a diversity of residential, commercial, institutional, recreational, agriculture, forestry, and light industrial uses.</p>	
Applicable Policies	Staff Comments
<p><b>Policy 3.3.1</b> To designate sections of the mainland and all islands as Coastal Communities (CC) on the Generalized Future Land Use Maps to accommodate growth and development in a manner similar to the Rural Centres</p>	<p>The subject site is within this designation.</p>
<p><b>Policy 3.3.3</b> That the intent of the Coastal Communities (CC) designation and zone is to accommodate a wide range of residential, institutional, commercial, industrial, agricultural, recreational and utility uses.</p>	<p>The subject site is within this designation and the proposed use of the site is industrial.</p>
<p><b>Policy 3.3.7</b> Council may consider the following uses by development agreement, pursuant to the requirements of Policy 13.14, in the Coastal Community (CC) Zone: yy) Sawmills</p>	<p>Sawmills can be considered through a development agreement within the CC zone.</p>
<p><b>Policy 8.6.4</b> To permit compatible Light Industrial uses in the Coastal Communities (CC) Zone, the Light Industrial (LI) Zone, the Business Park (BP) Zone, and the Rural Development (RD) Zone.</p>	<p>The proposed sawmill use is compatible with the surrounding context and maintains appropriate distances from nearby residential uses.</p>
<p>To enter into development agreement pursuant to the Municipal Government Act on the terms and conditions set forth in this Municipal Planning Strategy and a development agreement shall: 13.12.1 specify the development, expansion, alteration, or change in use permitted; and 13.12.2 specify the conditions under which the development may occur; and 13.12.3 set forth the terms by which Council may terminate the agreement. 13.12.4 The provisions of the Land Use By-law shall prevail after discharge of any agreement.</p>	<p>The required provisions are contained in the draft development agreement.</p>
<p><b>Policy 13.14.2:</b> That the proposal conforms to the intent of the Municipal Planning Strategy and to all other applicable Municipal By-laws and regulations, except where the application is for a development agreement and the requirements of the Land Use By-law need not be met; and</p>	<p>The proposal conforms to the intent of the Municipal Planning Strategy.</p>



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**Policy 13.14.4:** That the proposal is not in conflict with Municipal or Provincial programs in effect in the Municipality; and that the proposal is not premature or inappropriate by reason of the:

- a) Financial ability of the Municipality to absorb costs related to the development; or
- b) Adequacy of sewer and water services, including fire flows and water pressure or the adequacy of the site for on-site services; or
- c) Creation or worsening of a pollution problem in the area such as but not limited to soil erosion and siltation of watercourses; or
- d) Adequacy of storm drainage and effects of alteration to drainage patterns, including the potential for creation of a flooding problem; or
- e) Suitability of the site regarding grades, soils and geological conditions, location of watercourses, marshes, bogs and swamps, and proximity to utility rights-of-way; or
- f) Adequacy and proximity of school, recreation and other community facilities; or
- g) Adequacy of road networks in, nearby, and leading to the development, regarding congestion and traffic hazards; and
- h) That the proposal provides adequate off-street parking to prevent congestion, nuisance and inconvenience in the area; and
- i) The hours of operation are appropriate for the neighbourhood; and
- j) That the primary architectural features of the proposal, including but not limited to bulk, scale, roof shape, building materials, exterior cladding and shape, and size and relationship of doors and windows, shall be visually compatible with nearby buildings in the case of a new building, or with the original building in the case of an addition; and
- k) That the proposal will not significantly alter the character or stability of the surrounding neighbourhood.

- a) No financial impacts are expected to the Municipality from the proposed development.
- b) Servicing to the site appears adequate as the site is already developed with existing buildings.
- c) No concerns are expected from the proposed development.
- d) No drainage concerns are present as a result of the development already in place.
- e) A portion of the rear of the site has marshy conditions, but the front portion of the property has been developed. Impacts on the rear of the site are not expected, but any future development of the site will require avoidance of wetlands.
- f) No significant requirements are expected to schools and other community facilities from the proposed development.
- g) No significant impacts are expected to the transportation network from the proposed development. Nova Scotia Public Works may provide further detail on if this expectation is accurate.
- h) The proposed development needs to conform to zoning requirements for parking, but there appears to be adequate space on the lot for it to be accommodated.
- i) The operation is not expected to generate significant evening traffic.
- j) No architectural renderings have been provided, but future buildings are expected to be consistent with other industrial structures in the area.
- k) The development is similar in industrial character to nearby developments.